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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/717,841	11/20/2003	Robert F. Kuster		8557
7590	07/02/2004		EXAMINER	
ROBERT F. KUSTER			LEGESSE, NINI F	
7013 WEST WATERFORD AVENUE			ART UNIT	PAPER NUMBER
MILWAUKEE, WI 53220			3711	

DATE MAILED: 07/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/717,841	KUSTER, ROBERT F.	
	Examiner	Art Unit	
	Nini F. Legesse	3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 20 November 2003.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1,8-14,16,17 and 20 is/are rejected.
 7) Claim(s) 2-7, 15, 18, and 19 is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

Claim Objections

Claims 2, 3, 10, and 11 are objected to because of the following informalities:

With respect to claims 2 and 10, the expression “comprises a clasp that attaches to a free-standing pole” appears to be confusing. From Applicant’s disclosure it does not appear that the “free-standing pole” is to be claimed. Thus, it would read better if the expression is changed to - - comprises a clasp that is attachable to a free-standing pole --.

With respect to claims 3 and 11, the expression “comprises a clasp that attaches to a wall” appears to be confusing. From Applicant’s disclosure it does not appear that the “a wall” is to be claimed. Thus, it would read better if the expression is changed to - - comprises a clasp that is attachable to a wall -. Appropriate correction is required.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the “D-ring” disclosed in claims 4, 5, 12, and 13 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement-drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing

should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the expression "block "in claims 8, and 16 was not disclosed or was not defined in the specification.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 8, 17, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Plunkett, III (US Patent No. 4,733,861).

With respect to claims 1 and 17, Plunkett discloses an exercise device comprising:

- A grip (30,130) including a grip bore (32a, 132a);
- A shaft ((34, 134) including a shaft bore (34a);
- A tension cord (20) received within the grip bore and the shaft bore (see the right end of item 30. The handle/grip 32 has a bore 32a wherein the shaft element 34 is inserted and part of cord element 20 is received within the grip and the shaft elements);
- A first securing device (the combination of item 39 and 36 as shown on bottom right end of Fig. 1) configured to prevent the tension cord from slipping out of the grip bore and the shaft bore (see Fig. 1); and
- A second securing device configured to prevent the tension cord from slipping out of the grip bore and the shaft bore (column 3, lines 31-35 indicate that the ends of the line 20 are knotted. Therefore, the left top end side of Fig. 1 where 134 is shown where a knot is present is considered as a second securing device) wherein the second securing device creates tension on the tension cord by restricting movement of the training device.

With respect to claims 8 and 20, Plunkett discloses wherein the second securing device is a block (please note that examiner is giving the broadest meaning to the word

block according to the *Merriam-Webster's Collegiate Dictionary Tenth Edition*. The word block is defined as "a compact usu. Solid piece of substantial material". And also it is noted that Applicant appears to show ball 16 as his block as seen on his Fig. 3 of his instant application) that is larger than an opening that is created when a door is in an open position (item 134 with the knot end of item 20 is considered as a block that is larger than an opening that is created when a door is in an open position. It is clear that a door could be open at different angles with varying opening sizes. Therefore, it appears that item 134 could be considered to be larger than an opening of a door when the door is for example slightly open).

Claims 9, 10, 11, 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Tiller (US Patent No. 5,007,635).

With respect to claim 9, Tiller discloses an exercise device comprising:

- A grip including a grip bore (62);
- A tension cord received within the grip bore (12);
- A first securing device (24) configured to prevent the tension cord from slipping out of the grip bore and the shaft bore; and
- A second securing device (22) configured to prevent the tension cord from slipping out of the grip bore, wherein the second securing device creates tension on the tension cord by restricting movement of the training device.

With respect to claim 10, Tiller discloses wherein the second securing device comprises a clasp (item 22 is also considered as a clasp because the *Merriam-Webster's Collegiate Dictionary Tenth Edition* defines clasp as "a device as a hook for holding objects or parts together) that is attachable to a free-standing pole (last sentences of column 2 and lines 1-7 of column 3 discloses that the device could be looped about various objects and also see Fig. 1a).

With respect to claim 11, Tiller discloses wherein the second securing device comprises a clasp (see the definition of clasp as discussed in claim 10) that is attachable to a wall (if the wall has a ring element or looped element, the clasp is capable of being attached to it).

With respect to claim 16, Tiller discloses wherein the second securing device is a block that is larger than an opening that is created when a door is in an open position (items 22 and 24 are also considered as block elements. And item 22 is considered as being larger than an opening that is created when a door is in an open position. It is clear that a door could be open at different angles with varying opening sizes. Therefore, it appears that item 22 could be considered to be larger than an opening of a door when considering the maximum width of the hook element).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fox (US Patent No. 4,186,921) in view of Bailey (US Patent No. 5,615,879).

With respect to claims 9, Fox discloses a device comprising:

- A grip (12) including a grip bore (see Fig. 4);
- A cord (22) received within the grip bore;
- A first securing device (24) configured to prevent the cord from slipping out of the grip bore (see fig. 4); and
- A second securing device configured to prevent the cord from slipping out of the grip bore and the shaft bore (a combination of items 32, 36,38, and one end of cord 22 as shown on Fig. 3).

Fox discloses the invention as recited above but fails to teach the use of a tension cord and wherein the second securing device creates tension on the tension cord by restricting movement of the training device. However, Bailey discloses a device wherein the type of cord that is used in the device is a tension cord (see column 5, lines 56-60). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a tension cord as taught by Bailey in the Fox's device in order to protect the user form experiencing severe impacts or jolts during use of the device because a tension cord would serve as a shock absorber (see column 5, lines 56-65 of the Bailey's reference).

With respect to claim 14, the second securing device comprises a ball (32).

Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tiller in view of Cadley (US Patent No. 3,102,316).

As disclosed above Tiller teaches the use clasp elements (22 and 24). However, he fails to teach wherein the clasp element is a D-ring. Cadley teaches the use of a D-ring (6) fastening clip (see Fig. 3). It would have been obvious to one of ordinary skill in the art at the time the invention was made to use clasps with a variety of shapes including D-ring shaped clasps for holding different elements together. It appears that different shapes of clasps would accomplish similar purposes and those skilled in the art may use a variety of clasps including D-ring shaped clasp for fastening or holding different elements together without departing from the spirit and scope of the Tiller's invention.

Allowable Subject Matter

Claims 2-7, 15, 18 and 19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: with respect to claims 2-7, it would have not been obvious to add a clasp element and a ball element in the Plunkett's device. With respect to claim 15, it would have not been obvious to make the ball element (32) of Fox out of wood material. With respect to claims 18 and 19, it would have not been obvious to add a ball element to the Plunkett's device.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nini F. Legesse whose telephone number is (703) 605-1233. The examiner can normally be reached on 9:30 AM - 6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vidovich Greg can be reached on (703) 308-1513. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Nini F. Legesse

06/22/04